

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LUAYE KHATIB,

Plaintiff,

v.

SCI WASHINGTON FUNERAL
SERVICES, INC., a Washington corporation,
and UNISERVICE CORPORATION d/b/a
FLORAL HILLS CEMETERY,

Defendants.

No. 2:12-cv-00034-RAJ

**ANSWER TO AMENDED
COMPLAINT AND AFFIRMATIVE
DEFENSES**

COME NOW Defendants SCI Washington Funeral Services, Inc. ("SCI") and Uniservice Corporation d/b/a/ Floral Hills Cemetery ("Uniservice") (collectively, "Defendants"), by and through their attorneys of record, Lane Powell PC, and for their Answer and Affirmative Defenses to Plaintiff's Amended Complaint, hereby admit, deny and allege as follows:

I. PARTIES

1. Answering paragraph 1.1 of Plaintiff's Complaint, Defendants lacks sufficient information to form a belief as to the truth or falsity of the allegations therein and therefore deny them.

2. Answering paragraph 1.2 of Plaintiff's Complaint, Defendant SCI admits that it is a Washington corporation and conducts business in King County, Washington. Except as so

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1 admitted, all remaining allegations in paragraph 1.2 are denied.

2 3. Answering paragraph 1.3 of Plaintiff's Complaint, Defendant SCI admits that
3 Prentice Hall Corporation System is its registered agent. Except as so admitted, all remaining
4 allegations in paragraph 1.3 are denied.

5 4. Answering paragraph 1.4 of Plaintiff's Complaint, Defendant Uniservice admits
6 that it is an Oregon corporation and that it conducts business as Floral Hills Cemetery. Except
7 as so admitted, all remaining allegations in paragraph 1.4 are denied.

8 II. JURISDICTION AND VENUE

9 5. Answering paragraph 2.1 of Plaintiff's Complaint, Defendants admit that the
10 employment relationship between Plaintiff and Uniservice occurred in King County, but deny
11 the implication that they engaged in any acts or omissions giving rise to liability.

12 6. Answering paragraph 2.2 of Plaintiff's Complaint, but without admitting
13 liability, Defendants admits that venue is proper in King County.

14 7. Answering paragraph 2.3 of Plaintiff's Complaint, Defendants lack sufficient
15 information to form a belief as to the truth or falsity of the allegations therein and therefore
16 deny them.

17 III. FACTS AND CIRCUMSTANCES

18 8. Answering paragraph 3.1 of Plaintiff's Complaint, Defendant Uniservice admits
19 that it employed plaintiff from January 2010 through June 7, 2011. Except as so admitted,
20 Defendant Uniservice denies all remaining allegations in paragraph 3.1. Defendant SCI lacks
21 sufficient information to form a belief as to the truth or falsity of the allegations in paragraph
22 3.1 and therefore denies them.

23 9. Answering paragraph 3.2 of Plaintiff's Complaint, Defendant Uniservice admits
24 that it employed Plaintiff as a family service counselor and that his job responsibilities included
25 sales and services related to the interment process. Defendant Uniservice further admits that
26 Plaintiff's compensation included a base salary and commission. Except as so admitted,
27 Defendant Uniservice denies all remaining allegations in paragraph 3.2. Defendant SCI lacks

1 sufficient information to form a belief as to the truth or falsity of the allegations in paragraph
2 3.2 and therefore denies them.

3 10. Answering paragraph 3.3 of Plaintiff's Complaint, Defendants admit SCI owns
4 Cedar Lawns Memorial Park and that Plaintiff participated in negotiations with the Muslim
5 Association of Puget Sound to sell burial plots therein. Except as so admitted, all remaining
6 allegations in paragraph 3.3 are denied.

7 11. Answering paragraph 3.4 of Plaintiff's Complaint, Defendant Uniservice admits
8 that Plaintiff received a Rookie of the Year Award for sales made in 2010. Except as so
9 admitted, Defendant Uniservice denies all remaining allegations in paragraph 3.4. Defendant
10 SCI lacks sufficient information to form a belief as to the truth or falsity of the allegations in
11 paragraph 3.4 and therefore denies them.

12 12. Answering paragraph 3.5 of Plaintiff's Complaint, the allegations concerning
13 "landscaping concessions" are vague and therefore denied. Defendants lack sufficient
14 information to form a belief as to the truth or falsity of the allegations concerning Plaintiff's
15 representations to the Muslim community and therefore deny them. All remaining allegations
16 in paragraph 3.5 are denied.

17 13. Answering paragraph 3.6 of Plaintiff's Complaint, Defendants deny the
18 allegations.

19 14. Answering paragraph 3.7 of Plaintiff's Complaint, the allegations concerning
20 "landscaping concessions" are vague and therefore denied. Defendants admit that Plaintiff was
21 instructed to notify Dr. Wail that unauthorized language would need to be removed from his
22 contract. Except as so admitted, all remaining allegations in paragraph 3.7 are denied.

23 15. Answering paragraphs 3.8 of Plaintiff's Complaint, Defendants deny that they
24 changed their position with respect to Dr. Wail's contract. Defendants lack sufficient
25 information to form a belief as to the truth or falsity of the remaining allegations in paragraph
26 3.8 and therefore deny them.

27 16. Answering paragraphs 3.9 and 3.10 of Plaintiff's Complaint, Defendants deny

1 the allegations.

2 17. Answering paragraph 3.11 of Plaintiff's Complaint, Defendants deny the
3 implication that SCI ever considered landscaping concessions verbally or in writing. All
4 remaining allegations in paragraph 3.11 are denied.

5 18. Answering paragraph 3.12 of Plaintiff's Complaint, Defendants deny the
6 implication that SCI had a "change in position" or that the alleged "deal" with the Muslim
7 community would have resulted in "over a million dollars in sales." All remaining allegations
8 in paragraph 3.12 are denied.

9 19. Answering paragraph 3.13 of Plaintiff's Complaint, Defendants deny the
10 allegations.

11 20. Answering paragraph 3.14 of Plaintiff's Complaint, Defendant Uniservice
12 admits that Plaintiff was terminated after a burial plot was dug in the wrong location at Floral
13 Hills Cemetery. Defendant Uniservice lacks sufficient information or knowledge to form a
14 belief as to the truth or falsity of the allegations concerning Plaintiff's communications with an
15 unnamed family and therefore deny them. Except as so admitted, Defendant Uniservice denies
16 all remaining allegations in paragraph 3.14. Defendant SCI lacks sufficient information to
17 form a belief as to the truth or falsity of the allegations in paragraph 3.14 and therefore denies
18 them.

19 21. Answering paragraph 3.15 of Plaintiff's Complaint, Defendant Uniservice
20 admits that Plaintiff was responsible for the incorrect placement of a burial plot due, in part, to
21 his failure to follow required verification procedures, including confirmation of the location by
22 family. Except as so admitted, Defendant Uniservice denies all remaining allegations in
23 paragraph 3.15. Defendant SCI lacks sufficient information to form a belief as to the truth or
24 falsity of the allegations in paragraph 3.15 and therefore denies them.

25 22. Answering paragraph 3.16 of Plaintiff's Complaint, Defendant Uniservice
26 admits that Plaintiff asked Dan Dugan to review his termination and that, as a result of said
27 review, Plaintiff was not reinstated to his former position within Uniservice. Except as so

1 admitted, Defendant Uniservice denies all remaining allegations in paragraph 3.16. Defendant
2 SCI lacks sufficient information to form a belief as to the truth or falsity of the allegations in
3 paragraph 3.16 and therefore denies them.

4 23. Answering paragraph 3.17 of Plaintiff's Complaint, Defendant Uniservice
5 admits that Plaintiff was paid an hourly wage of \$8.50, plus overtime to extent required by law.
6 Except as so admitted, Defendant Uniservice denies all remaining allegations in paragraph
7 3.17. Defendant SCI lacks sufficient information to form a belief as to the truth or falsity of the
8 allegations in paragraph 3.17 and therefore denies them.

9 24. Answering paragraph 3.18 of Plaintiff's Complaint, Defendant Uniservice
10 denies the allegations. Defendant SCI lacks sufficient information to form a belief as to the
11 truth or falsity of the allegations in paragraph 3.18 and therefore denies them.

12 **IV. WASHINGTON LAW AGAINST DISCRIMINATION**

13 25. Answering paragraphs 4.0 of Plaintiff's Complaint, Defendants restates and
14 realleges its responses to paragraphs 1.1 through 3.18 as though restated fully herein.

15 26. Answering paragraphs 4.1, 4.2 and 4.3 of Plaintiff's Complaint, Defendants
16 deny the allegations.

17 **V. TITLE VII**

18 27. Answering paragraphs 5.0 of Plaintiff's Complaint, Defendants restates and
19 realleges its responses to paragraphs 1.1 through 4.3 as though restated fully herein.

20 28. Answering paragraph 5.1, 5.2 and 5.3 of Plaintiff's Complaint, Defendants deny
21 the allegations.

22 **VI. UNPAID WAGES AND COMMISSIONS**

23 29. Answering paragraphs 6.0 of Plaintiff's Complaint, Defendants restates and
24 realleges its responses to paragraphs 1.1 through 5.3 as though restated fully herein.

25 30. Answering paragraph 6.1 of Plaintiff's Complaint, Defendants deny the
26 allegations.

RELIEF REQUESTED

31. Answering paragraphs 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 7.7 of Plaintiff's Complaint, Defendants deny that Plaintiff is entitled to any of the relief requested.

32. Any allegations not expressly admitted herein are expressly denied.

AFFIRMATIVE AND OTHER DEFENSES

Defendants has not yet had a full opportunity to conduct a reasonable inquiry into all facts underlying this lawsuit, but based upon their collective knowledge, information and belief, wish to interpose the following affirmative and other defenses, some or all of which may ultimately be supported by the facts to be revealed in discovery and investigation of the case. Upon request and after having conducted discovery in this case, Defendants will withdraw those affirmative defenses that are unsupported by the facts revealed in pre-trial discovery and investigation, should there be any. On the basis of the above and by way of further Answer to Plaintiff's Amended Complaint, Defendants allege the following defenses:

1. Plaintiff improperly named and/or failed to name proper parties.
2. Plaintiff has failed to state a claim upon which relief may be granted.
3. Any actions taken by Defendants with respect to Plaintiff were undertaken for legitimate business reasons and no discriminatory, retaliatory or other unlawful factors motivated Defendants' actions towards Plaintiff.
4. Without conceding that Plaintiff has suffered any damages as a result of any alleged wrongdoing by the Defendants, Plaintiff has failed to mitigate or minimize the alleged damages; alternatively, any claim for relief must be set off and/or reduced by wages, compensation, pay and benefits, or any other earnings or remunerations, profits, and benefits actually received by Plaintiff.

1 5. If any improper, illegal or discriminatory acts were taken by any employee of
2 Defendants against Plaintiff, it was outside the course and scope of that employee's
3 employment, contrary to company policies, and was not ratified, confirmed or approved by
4 Defendants. Thus, any such actions cannot be attributed or imputed to Defendants.
5

6 6. Defendants did not have actual or constructive knowledge of any of the alleged
7 discriminatory acts alleged in Plaintiff's Amended Complaint.

8 7. Any act or omission alleged to have given rise to Plaintiff's Complaint was in
9 good faith and based on a reasonable belief that Defendant was in compliance with all
10 applicable laws.

11 8. Defendants have in place a clear and well-disseminated policy against
12 harassment, discrimination and retaliation and a reasonable and available procedure for
13 handling complaints thereof, which provides for prompt and effective responsive action. To
14 the extent Plaintiff unreasonably failed to take advantage of the preventive or corrective
15 opportunities provided by Defendants or to avoid harm otherwise, Plaintiff's claims concerning
16 alleged discrimination or harassment are barred.
17

18 9. Plaintiff's injuries and damages, if any, are a result of his own actions or of the
19 actions of a non-party to this lawsuit.
20

21 10. Plaintiff's claims, in whole or in part, are barred by the doctrines of waiver,
22 laches, or estoppel.

23 11. Plaintiff's damages are barred in whole or in part by the doctrine of after-
24 acquired evidence.

25 12. Plaintiff was an at-will employee.
26

27 13. Plaintiff's claims are barred in whole or in part to the extent that they exceed the

1 scope of or are inconsistent with the charged Plaintiff filed with the EEOC.

2 14. Plaintiff's claims are barred in whole or in part, by applicable statutes of
3 limitations, to the extent that they were not presented to the EEOC in a timely fashion and to
4 the extent that they did not occur within the time frames prescribed by law under pertinent
5 statutes and/or regulations.

6 15. If Plaintiff is able to show that any discrimination occurred, which Defendants
7 expressly deny, Defendants reserves the right to assert a mixed motive defense.

8 16. Defendants reserve the right to amend its Answer to state additional affirmative
9 or other defenses as may become known in discovery.
10

11 **DEFENDANTS' PRAYER FOR RELIEF**

12 WHEREFORE, Defendants respectfully requests that the Court grant the following
13 relief:
14

15 1. That Plaintiff's Amended Complaint be dismissed with prejudice, and that
16 Plaintiff take nothing by way of relief requested against Defendants;

17 2. That Defendants be awarded their costs and reasonable attorneys' fees against
18 Plaintiff in defending this action, as authorized by applicable law; and

19 3. That the Court award such additional and further relief to Defendants as may be
20 just and equitable under the circumstances.
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1 DATED: January 12, 2012.

2 LANE POWELL PC

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4 By s/Renee Grant Bluechel
5 Renee Grant Bluechel, WSBA No. 39500
6 grantbluechelr@lanepowell.com
7 David Hosenpud, (*pro hac vice admission*
8 *pending*)
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10 Attorneys for Defendants SCI Washington Funeral
11 Services, Inc., and Uniservice Corporation d/b/a
12 Floral Hills Cemetery.
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CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 12th day of January, 2012, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Matthew J. Bean, Esq.
Bean Porter Hawkins, PLLC
Denny Building, Suite 835
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mattbean@mjbean.com

Executed on the 12th day of January, 2012, at Seattle, Washington.

s/ Terri L. Potter
Terri Potter